* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

- CRL. REVISION PETITION NO. 928/2006 & CRL. M.NO.14218/2006
- & CRL. REVISION PETITION NO.893-95/2006

Reserved on: April 18, 2007
Decided on: April 24, 2007

1. <u>CRL. REVISION PETITION NO. 928/2006 & CRL. M.NO.14218/2006</u>

SUNIL BANSAL ..... Petitioner
Through Mr. D.C. Mathur, Sr. Advocate with
Mr. Nitin Sehgal, Advocate

Versus

THE STATE OF DELHI ..... Respondent
Through Mr. Pawan Sharma, Advocate

<u>2. CRL. REVISION PETITION NO.893-95/2006</u>

PARVEEN BANSAL & ORS. ..... Petitioners
Through Mr. D.C. Mathur, Sr. Advocate with
Mr. Nitin Sehgal, Advocate

Versus

THE STATE OF DELHI ..... Respondent
Through Mr. Pawan Sharma, Advocate

CORAM:

Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

<u>Mr. Justice S. Ravindra Bhat</u>

1. These present Criminal Revision Petitions are preferred by the Petitioners against the charges framed by the Learned Additional Sessions Judge under Sections 498 A/ 304B Indian Penal Code (IPC) by his order dated 6.11.2006
2. The brief facts necessary to decide this petition are that one Neelam (hereinafter referred to as "the deceased") was found hanging on 25.9.2004 in her matrimonial house. She was declared dead in the hospital. She had died an unnatural death. The deceased was married to Sunil Bansal (hereinafter referred to as "the husband", he is the petitioner in Criminal Revision Petition No.928/2006) on 2.4.1998. Two sons were born out of the wedlock. The other revision petitioner is brother in law of the deceased. The statement of the deceased's parents and brother were recorded by the police on the day of the death. Those statements were that the deceased was living happily in the matrimonial home since the inception of marriage, and there were no disputes regarding any issue. The deceased was ill, according to them, as she was suffering from epilepsy/ giddiness since a couple of months. They also stated that no body could be blamed for her death.
3. It is alleged that on the next day i.e. 26.9.2004 the father of the deceased made a contrary statement. On the basis of this statement an FIR was lodged by the police against the Petitioners. Certain allegations were made with regard to harassment, beatings given to the deceased by her in-laws and dowry demands right from the eighth month of the marriage. The allegations were general in nature; the Petitioners allege that the deceased's said relatives did not mention as to when such harassment was caused to her. The deceased's father had also stated that she had made a phone

call to him on 24.9.2004 and complained that she was beaten by her in-laws for many days and was not given anything to eat and drink. On the basis of these statements, the trial court charged the Petitioners for committing offences under sections 498A/304B IPC.

4. The Petitioners urge that had there been any dowry demands or harassment such as denial of food and water to the deceased, then her parents and brother would not have stated that their daughter was living happily in her matrimonial house. Counsel for the Petitioners further urged that the couple were married for the last 6 years and there was never any complaint regarding harassment, etc. The Petitioners' counsel urges that there was no dying declaration of the deceased alleging that they were responsible for her death. The Post mortem report did not corroborate the allegations of beatings, apart from the ligature marks on the neck of the deceased which were due to hanging. There was no other external injury found on the body of the deceased.
5. The Police, on 25.9.2004 recorded three statements; one by the deceased's father, secondly of her mother and the third of her brother. All of them stated that the deceased was happily married; there was no quarrel on any issue. According to them, the deceased fell ill, as she was suffering from epilepsy/giddiness. They also stated that no one could be held responsible for her death.
6. On 26.9.2004, the father of the deceased recorded another statement with the Police. It is on basis of this statement an FIR was lodged against the Petitioners. He stated in the statement that he had spent around Rs.9 lakhs for the wedding, and that after some time the deceased's husband and in laws started beating her for bringing less dowry.

The father stated that the Petitioners, on the deceased first child's birth demanded a Maruti car and Rs.2 lakhs in cash but the deceased carried just Rs.1 lakh to the matrimonial house for which she was again harassed. The father stated that this continued until the birth of the second son, when again a demand for another car and Rs.2 lakhs was made. He further stated that the deceased on 24.9.2004 at about 7.00 pm called him up, weeping and complained that she was harassed by her in-laws and husband, that she was not given anything to eat or drink. She had also mentioned that her life was under threat. Her father stated that he would pick her up the next day. He also stated that his daughter was killed by the Petitioners.

7. The trial court charged the Petitioners for committing offences under Sec.498A/304B IPC, the extracts of the order dated 6.11.2006 are as follows:

> *"The Complaint shows allegations of dowry demand and harassment on account of dowry soon after marriage and a day before her death she made a telephone call stating about the harassment meted out to her. The phrase soon after death is not to be interpreted strictly but according to the facts of the case. Where after marriage the deceased was harassed on numerous occasions on account of dowry and the deceased last complained to her parents, a day before her death, do not take out the case from the purview of phrase 'soon before death'. Thus, a case of dowry demand is made out against the accused Sunil Bansal, Leelavati, MadanLal and Parveen Bansal. Hence a charge u/s 498A/304B/34 IPC be framed against all the above said accused persons"*

8. The learned Senior Counsel for the Petitioners Mr. D.C.Mathur argued that the statement of the father of the deceased contain allegations pertaining dowry demands, harassment and beatings by the in-laws. There is no specific allegation against any one; the allegations are general in nature. The learned

Senior counsel argued that the ingredients of Sec.304-B had not been fulfilled in this case as there were no allegations regarding dowry demands from the year 2000 to 2004. He also urged that the post mortem report did not show any external injuries but ligature marks caused by hanging. It was argued that the later statement of 26.9.2004 is unreliable, as it is an after thought. The father gave two contrary statements in the case which could be a result of pressure from the relatives. If the second statement is taken to be true then he did not state the circumstances under which the first statement was recorded. The counsel also argued that mere denial of food and drink for a couple of days does not constitute dowry demand, so as to call for a charge under Section 304-B, IPC.

9. Counsel relied on the decision reported in *Sarbans Singh Vs. State of NCT* 2005 (116) DLT 698; and *Gurcharan Kumar vs. State of Rajasthan* 2003(2) SCC 698 to say that a revisional court, examining the correctness of charges, has to sift and weigh the materials, and if convinced that such proof or evidence, capable of conversion into material and legal evidence, can uphold the charges. According to him, the trial court fell into error in not sifting the materials; and if it had exercised jurisdiction properly, charges would not have been framed.

10. The petitions were opposed by Mr. Sharma, learned counsel for the State. It was contended that the charges were framed after correctly appreciating the materials on record. Counsel submitted that merely because

some contradictions existed between two statements, the trial Court could not have inferred that no evidence existed. The later statements, it was submitted deserved to be taken into account. Mr. Sharma further urged that the death had occurred in unnatural circumstances, clearly pointing to the complicity of the accused. The Court had applied its mind as was evident from the fact that the married sister-in-law was not charged with committing the offences; the Court charged the rest of the accused.

11. The facts narrated above are that the death occurred on 24.9.2004. On that date three statements were recorded. They were by the father, mother and brother of the deceased. Those statements nowhere implicated the petitioners. On the contrary uniformaly the parents stated that the deceased was living happily ever-since her marriage on 20.3.1996. It also recorded that the deceased had fallen ill and was suffering for about three months prior to the incident. Subsequently on the next date; the father got another statement recorded, alleging harassment of the deceased for dowry at the time of birth of the children, in 1998 and 2000. He also alleged that cash was given for the purpose. He further alleged that for a while, the deceased stayed with him, in the parental house but later went back to the matrimonial home. He alleged that on 24.9.2004, his daughter rang him up alleging that she was being continuously beaten and that she apprehended being killed by the accused. The brother of the deceased also recorded another statement, much later on 6.1.2005. Interestingly in the second statement of the father no mention is

made about the earlier statement recorded regarding death of his daughter. He also did not mention as to under what circumstances he had to make a fresh statement and whether the earlier statement was given under compulsion or any kind of threat. His son in his statement on 6.1.2005 alleged that the statements of all the three namely himself, his father and his mother were obtained under duress by the police, on 24.9.2004.

12. The above facts would show that the incidents relating to demands for dowry and acts of harassment pertaining to dowry, allegedly occurred either soon after the marriage or around the time of the birth of two children – 1998 and 2000. None of the allegations point to any kind of cruelty, harassment or cruel behaviour having any proximity, in point of time to the date of death ie 25.9.2004. Though there is no thumb rule as to what is meant by the expression "soon before" death of a woman, under Section 304-B yet despite substantial flexibility, the charge cannot be maintained, if the acts are remote in point of time. The Supreme Court has held in *Kedya Perumal Vs. State of Tamil Nadu* AIR 2003 SC 3828 and *Yashoda Vs. State of M.P*. 2004(3) SCC 98 that there should not be too much of a time-lag between cruelty and harassment in connection with demand for dowry and the death in question. It was also held that there must exist a proximate and live link between the effect of cruelty based on dowry demands and death of the woman. The Court held that if the alleged incident of cruelty is remote in time and has become stale, not to disturb mental equilibrium of the woman, it would be of no

consequence.

13. The evidence in this case about dowry harassment, which could have been the cause for death of the deceased, is at best sketchy and most certainly contradictory. Both sets of statements recorded by the relatives of the deceased point to dowry or other demands proximate to the marriage and birth of the two children which would go back to at least 3-4 years before the incident. In these circumstances, on exercise of sifting of materials and particularly keeping in mind the existence of two contradictory statements, it cannot be said that a grave suspicion exists about the commission of offence under Section 304-B, by the Petitioners. It is well-settled that if two views at charge framing stage exist, based upon the materials available, the view favouring the accused is to be preferred. *(Ref. Dilawar Balu Kurane Vs. State of Maharashtra 2002 SCC (Crl) 310.*

14. As far as the allegation regarding commission of offence under Section 498-A IPC is concerned I am of the opinion that in view of the un-safe and contradictory nature of the statements, that charge too cannot be framed. The statement of the deceased father, as observed in the preceding paragraph, did not mention anything about the first statement made on 24.9.2004. That previous statement had completely ruled out any complicity by the petitioners. Yet in the statement recorded by his son much later on 6.1.2005, some sort of explanation for the omission was sought to be given – it was alleged that the first statement was recorded under duress. These statements in my considered

opinion are not only contradictory but unsafe and the Court cannot be expected to prefer one version over the other. From the record it appears that the deceased's father is a businessman of some means. His son too is an adult. At that time he was 24 years. Therefore, the attempt at improving the case at each stage, in my opinion injects suspicion as to their veracity. Without any further comment it could be said that they do amount to bringing in two versions, which can be considered by the Court. In such an event the Court would be within its rights in concluding that the version supporting the discharge of the petitioner is to be preferred.

15. For the above reasons the petitions have to succeed; they are accordingly allowed. The charges framed against the petitioner-accused are hereby set aside.

April 24, 2007 (S. RAVINDRA BHAT)
JUDGE